No. 17-1307

In the Supreme Court of the United States

DENNIS OBDUSKEY, PETITIONER

v.

MCCARTHY & HOLTHUS LLP, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF FOR RESPONDENT MCCARTHY & HOLTHUS LLP

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QUESTION PRESENTED

Whether an entity that initiates a non-judicial foreclosure to enforce a security interest under Colorado law thereby engages in debt collection for purposes of the Fair Debt Collection Practices Act.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-13a) is reported at 879 F.3d 1216. The order of the district court (Pet. App. 14a-32a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 19, 2018. The petition for a writ of certiorari was filed on March 13, 2018, and granted on June 28, 2018. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The Fair Debt Collection Practices Act, 15 U.S.C. 1692-1692p, is reproduced in an appendix to this brief.

STATEMENT

This case concerns the application of the Fair Debt Collection Practices Act (FDCPA) to a particular type of foreclosure activity governed by state law. The FDCPA bars debt collectors from engaging in certain practices while attempting to collect debts. In defining "debt collector," the FDCPA distinguishes between entities that primarily engage in "the collection of any debts" and entities that primarily engage in the "enforcement of security interests." 15 U.S.C. 1692a(6). Entities in the former category are "debt collectors" subject to the FDCPA for all purposes; those in the latter category are subject only to a specific provision of the FDCPA not at issue here. The question presented in this case is whether enforcing a security interest by initiating a non-judicial foreclosure (*i.e.*, a foreclosure with limited judicial involvement) constitutes debt collection under the FDCPA.

Petitioner, a Colorado resident, obtained a loan that was secured by a residential property and serviced by a bank. Petitioner defaulted on the loan and stopped making payments. Several years later, the bank hired respondent McCarthy & Holthus LLP, a law firm, to pursue a non-judicial foreclosure of the property under Colorado law. Respondent notified petitioner that it had been instructed to commence the foreclosure process. It then initiated a non-judicial foreclosure, which would allow sale of the property, in accordance with Colorado law.

As is relevant here, petitioner filed suit against respondent, contending that, by initiating a non-judicial foreclosure, respondent had engaged in prohibited debt-collection activity under the FDCPA. The district court

dismissed that claim. The court of appeals affirmed. It reasoned that, by initiating the foreclosure, respondent was enforcing a security interest. And the court held that merely enforcing such an interest, without attempting to obtain money from the debtor, does not constitute debt collection under the FDCPA. The court of appeals' holding is correct, and its judgment should therefore be affirmed.

A. Background

1. The FDCPA bars debt collectors from engaging in certain practices while attempting to collect debts. 15 U.S.C. 1692c-1692h, 1692k; see 15 U.S.C. 1692(e). Of particular relevance here, it provides that, when a consumer disputes the validity of a debt, a debt collector "shall cease collection" until the collector provides the consumer with verification of the debt. 15 U.S.C. 1692g(b).

The FDCPA defines "debt" as an actual or alleged "obligation of a consumer to pay money." 15 U.S.C. 1692a(5). And the FDCPA defines a "debt collector," in turn, as an entity that engages in "any business the principal purpose of which is the collection of any debts," or that "regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another": *i.e.*, an entity whose overall practices involve sufficiently frequent debt collection. 15 U.S.C. 1692a(6); *Henson* v. *Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1721 (2017). "For the purpose of" a provision not at issue here (which prohibits threatening or taking actions to effect dispossession or disablement of property in certain circumstances, 15 U.S.C. 1692f(6)), the FDCPA defines "debt collector" "also" to include an entity that engages in "any business the principal purpose of which is the enforcement of security interests." 15 U.S.C. 1692a(6).

2. This case concerns the actions of a law firm in initiating a non-judicial foreclosure on a deed of trust securing a debt under Colorado law.

The remedy of foreclosure has a long history in Anglo-American law. Originally, if a debtor failed to make a payment on the exact date it was due, a creditor holding a mortgage simply received the property that secured the debt. See 4 *Powell on Real Property* § 37.36 (Michael Allan Wolf ed. 2018). To mitigate the harshness of that rule, English courts developed an "equity of redemption": *i.e.*, an "equitable right of a borrower to buy back, or redeem, property conveyed as security" by paying the debt after the due date. *BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 541 (1994). Because that right was indefinite, however, "title to forfeited property could remain clouded for years" after the default. *Ibid.* In response, courts created the additional equitable remedy of foreclosure, enabling a creditor "forever [to] foreclose[]" the debtor from "exercising his equity of redemption." *Ibid.*

At issue in this case is a foreclosure with limited judicial involvement, known as a "non-judicial foreclosure." Thirty-three States and the District of Columbia permit non-judicial foreclosures. Those state-law schemes are broadly similar, requiring public notice of the foreclosure sale and preventing a creditor from obtaining a deficiency judgment against the debtor within the non-judicial foreclosure process. See 1 Grant S. Nelson et al., *Real Estate Finance Law* § 7:20, at 944 & n.1 (6th ed. 2014); 4 *Powell on Real Property* § 37.42[1], [4]-[6].

The non-judicial foreclosure at issue in this case was initiated under a deed of trust under Colorado law. A deed of trust is a security instrument that preauthorizes the sale of a property in the event of default. See Colo. Rev. Stat. § 38-38-100.3(7); Colo. R. Civ. P. 120(a). A creditor holding a debt secured by a deed of trust has, first, "a

right *in personam* against the debtor" that "can be collected out of a debtor's general assets," and second, "a specific claim *in rem* against the particular property constituting the security." Frederic P. Storke & Don W. Sears, *Enforcement of Security Interests in Colorado*, 25 Rocky Mtn. L. Rev. 1, 1 (1952) (Storke & Sears). Upon default, therefore, the secured creditor has a right "different and separate from the mere right to be paid": it may foreclose on the lien of the deed of trust, rather than (or in addition to) suing on the debt itself. *Folda Real Estate Co.* v. *Jacobsen*, 223 Pac. 748, 748 (Colo. 1924); see *Foothills Holding Corp.* v. *Tulsa Rig, Reel & Manufacturing Co.*, 393 P.2d 749, 751 (Colo. 1964); Storke & Sears 1.

Colorado law sets out a detailed framework for non-judicial foreclosure. See Colo. Rev. Stat. §§ 38-38-100.3 to 38-38-114; Colo. R. Civ. P. 120. Unlike most other States that permit non-judicial foreclosure, Colorado relies on a public trustee, an impartial elected or appointed official, throughout the non-judicial foreclosure process. See Colo. Rev. Stat. §§ 38-37-102, 38-38-101, 38-39-101. The public trustee "ensure[s] the protection of debtors while maintaining a speedy, efficient procedure for creditors." *Plymouth Capital Co.* v. *District Court*, 955 P.2d 1014, 1015 (Colo. 1998); see Storke & Sears 20.

Colorado law specifies various notices the creditor or its attorney must provide to the debtor in order to pursue a non-judicial foreclosure. At least thirty days before initiating the non-judicial foreclosure process, a creditor must send a notice to the debtor containing, *inter alia*, information about the Colorado foreclosure hotline and the creditor's loss-mitigation representative. See Colo. Rev. Stat. § 38-38-102.5(2). A creditor must then file a "notice of election and demand" with the public trustee; with that notice, the creditor must provide evidence of the debt's validity as well as other documentation. *Id.* § 38-38-

101(1), (4). The public trustee then reviews the filing and, if the filing is complete, records the notice, thereby officially commencing the foreclosure process. See *id.* § 38-38-102(1); *Land Title Insurance Corp.* v. *Ameriquest Mortgage Co.*, 207 P.3d 141, 143 n.6 (Colo. 2009).

Although judicial involvement in a non-judicial foreclosure is limited, Colorado law does require the creditor to obtain an order from a state court establishing a "reasonable probability that a default justifying the sale has occurred." Colo. R. Civ. P. 120; see Colo. Rev. Stat. § 38-38-105. That allows a court to address "issues related specifically to the existence of a default." *Plymouth Capital*, 955 P.2d at 1016. At that stage of the process, the debtor is entitled to direct notice, even if he is represented by counsel, as are other parties that may have acquired an interest in the property. The debtor is also afforded an opportunity to object to the sale: for instance, because the foreclosing entity has no right to foreclose or no default has actually occurred. See Colo. R. Civ. P. 120(a)-(d).

In addition to the notices required for the hearing, the public trustee is required to mail the debtor and certain other parties a combined notice that identifies the date of sale and informs the debtor of the right to cure the default and reinstate the loan before the sale. See Colo. Rev. Stat. §§ 38-38-103, 38-38-104. The combined notice must also be published weekly in a newspaper for at least four weeks. See *id.* § 38-38-103(5)(a).

The public trustee must schedule an initial sale date within 125 days of the recording of the notice of election and demand. See Colo. Rev. Stat. § 38-38-108(1)(a). At least two days before the sale, the creditor must submit an initial bid to the public trustee, up to the amount owed on the debt. See *id.* § 38-38-106(1), (6). The public trustee must advertise the initial bid to the general public and then conduct the sale. See *id.* §§ 38-38-106(3), 38-38-110.

The creditor and other parties may attend the sale and submit bids in excess of the initial bid. See *id.* § 38-38-106(7). All funds from the sale are paid to the public trustee. See *id.* § 38-37-108.

If the property sells for less than the amount owed on the debt, the creditor may not seek to collect any deficiency from the debtor as part of the non-judicial foreclosure process; in order to seek to recover that amount, the creditor must file a separate judicial action. See Colo. Rev. Stat. § 38-38-106(6); *Bank of America* v. *Kosovich*, 878 P.2d 65, 66 (Colo. App. 1994); Storke & Sears 4. If the property sells for more than the amount owed, the excess funds are retained and then paid in order of priority to any junior lienholders. Any remaining funds are paid into escrow and, if the debtor fails to claim them, released to the county or transferred to the state treasurer. See Colo. Rev. Stat. § 38-38-111.

B. Facts And Procedural History

1. In 2007, petitioner obtained a loan to buy a residential property in Bailey, Colorado. The loan was secured by the property and serviced by Wells Fargo Bank, N.A. Petitioner defaulted on the loan in 2009 and stopped making payments in 2011. Between 2008 and 2012, Wells Fargo repeatedly worked with petitioner to obtain payment on the loan, offering multiple loan modifications. Wells Fargo also initiated, but then withdrew, multiple foreclosures. Pet. App. 2a, 15a.

In 2014, Wells Fargo hired respondent, a law firm, to pursue a non-judicial foreclosure under Colorado law. Petitioner's allegations against respondent focus on a letter that it sent him stating that it had been "instructed to commence foreclosure against the * * * property." The letter contained a series of disclaimers, including one informing petitioner that respondent "may be considered

a debt collector attempting to collect a debt." The letter further stated the amount petitioner owed to the creditor; noted that respondent would assume the debt to be valid unless petitioner disputed it within thirty days; and warned that foreclosure could be commenced before the end of that period. J.A. 37-38; Pet. App. 15a-16a.

Petitioner alleged that he responded to the letter, asking for verification of the debt, but that he did not receive any response. On appeal, however, petitioner produced for the first time a letter from respondent dated August 4, 2015, that provided verification of the debt. J.A. 23, 46-47; Pet. App. 2a & n.1.

In May 2015, respondent took steps to initiate a non-judicial foreclosure under Colorado law by filing a notice of election and demand for sale with the public trustee. Shortly thereafter, petitioner filed a complaint with the Bureau of Consumer Financial Protection alleging that respondent had not responded to his verification request. To date, the sale of the property has not occurred. J.A. 39-41; Pet. App. 2a, 16a.[1]

2. On August 12, 2015, petitioner filed suit against respondent and Wells Fargo (as well as other improperly named entities) in the United States District Court for the District of Colorado, asserting various claims under the FDCPA and Colorado state law. Pet. App. 2a-3a, 16a. The only live claim in this case is petitioner's FDCPA

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[1] Petitioner has since filed for bankruptcy. In his Chapter 13 bankruptcy plan, petitioner proposes "surrender[ing]" the property without paying the creditor—thus accomplishing the same substantive result sought by the non-judicial foreclosure at issue here. See Dkt. 2, at 6, 8, *In re Obduskey*, No. 18-18627 (Bankr. D. Colo. Oct. 2, 2018).

claim against respondent. See Pet. Br. 7.[2] In that claim, petitioner alleges that respondent engaged in prohibited debt-collection activity by failing to provide verification of the debt before initiating the non-judicial foreclosure. Pet. App. 16a; J.A. 23.

As is relevant here, respondent moved to dismiss the complaint, and the district court granted the motion. Pet. App. 14a-32a. The district court held that respondent's activities were not covered by the FDCPA because the complaint "d[id] not allege that [respondent] took any action to obtain payment on a debt." *Id.* at 20a. The court rejected the contention that the foreclosure process could itself constitute the "collection of a debt." *Id.* at 21a. The court added that the disclaimer in respondent's letter stating that it might be considered a debt collector was "insufficient to state an FDCPA claim." *Ibid.*

3. The court of appeals affirmed, holding that respondent was not engaged in debt collection under the FDCPA. Pet. App. 1a-13a.

While noting that petitioner's complaint was "far from perfect," the court of appeals determined that petitioner had sufficiently pleaded that respondent "failed to verify [petitioner's] debt after it was disputed, in violation of [Section] 1692g." Pet. App. 5a. The court of appeals then proceeded to consider whether respondent qualified as a "debt collector" engaged in "debt collection," noting that

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[2] Petitioner's FDCPA claim against Wells Fargo was dismissed (and the dismissal affirmed) on the ground that Wells Fargo was entitled to invoke a statutory exclusion for persons who obtained debt before default. Pet. App. 4a-5a, 18a-20a; see 15 U.S.C. 1692a(6)(F). Petitioner did not seek review from this Court concerning that claim, and the judgment in favor of Wells Fargo is therefore final regardless of this Court's resolution of the question presented. See Pet. Br. 8 n.3.

the court had not previously addressed that question in the context of non-judicial foreclosure. *Id.* at 5a-6a, 12a.

The court of appeals explained that, under the FDCPA's "plain language," an entity qualifies as a debt collector when it is attempting to collect money from a debtor. Pet. App. 7a. Merely enforcing a security interest, the court continued, is not inherently an attempt to collect money; to the contrary, a consumer has no obligation to pay any money in a non-judicial foreclosure. *Ibid.* The court deemed persuasive the Ninth Circuit's reasoning in its recent decision in *Ho* v. *ReconTrust Co., N.A.*, 858 F.3d 568, cert. denied, 138 S. Ct. 504 (2017), which held that initiating a non-judicial foreclosure without seeking payment does not render an entity a "debt collector" for purposes of the FDCPA. Pet. App. 7a.

The court of appeals declined to follow sweeping language in a Sixth Circuit decision asserting that "*every* mortgage foreclosure, judicial or otherwise," triggers application of the FDCPA. Pet. App. 8a (quoting *Glazer* v. *Chase Home Finance LLC*, 704 F.3d 453, 461 (2013)). According to the court of appeals, while judicial foreclosure activity (the type of foreclosure at issue in the Sixth Circuit decision) "may" be covered by the FDCPA, non-judicial foreclosure is different in an "obvious and critical" respect, because a trustee has no right to "collect any deficiency in the loan amount personally against the mortgagor" through the non-judicial foreclosure process. *Id.* at 8a-9a (citation omitted).

The court of appeals reasoned that the distinction between judicial and non-judicial foreclosures is significant under Colorado law, which requires a creditor that carries out a non-judicial foreclosure to collect any deficiency in a separate action. Pet. App. 8a. Because a non-judicial foreclosure would allow the public trustee only to "obtain proceeds from the sale of the foreclosed property, and no

more," the court determined that respondent's letter notifying petitioner that it would initiate a non-judicial foreclosure did not constitute an attempt to seek the payment of money from petitioner. *Id.* at 9a (citation omitted).

In making that determination, the court of appeals emphasized that the FDCPA might apply if respondent had "demand[ed] payment" or "attempted to induce [payment] by threatening foreclosure." Pet. App. 9a, 12a. Here, however, petitioner did not allege that respondent had done either; instead, he alleged simply that respondent had "sent * * * one letter notifying [him] that it was hired to commence foreclosure" against the property. *Id.* at 12a.

The court of appeals observed that a contrary holding would create a conflict between the FDCPA and Colorado law. Pet. App. 10a. As the court noted, Colorado law requires that notice be provided directly to a debtor (such as petitioner) who is represented by counsel, as well as to any interested third parties, in advance of a non-judicial foreclosure sale, whereas the FDCPA forbids such communications. *Id.* at 10a-11a. The court reasoned that Congress did not express a "clear and manifest" intention to supplant state law in an area of traditional state regulation, especially given that Colorado's provisions are designed to "*protect* the consumer." *Id.* at 11a (citation omitted). The court thus concluded that the "mere act of enforcing a security interest through a non-judicial foreclosure" under Colorado law does not constitute debt collection within the meaning of the FDCPA. *Id.* at 12a.

The court of appeals made clear that it was not addressing whether "more aggressive collection efforts," such as "leveraging the threat of foreclosure into the payment of money," would qualify as "debt collection" under

the FDCPA. Pet. App. 12a. The court added that petitioner was still free to contest the non-judicial foreclosure in a proceeding under Colorado law. *Ibid.*

SUMMARY OF ARGUMENT

The court of appeals correctly held that merely enforcing a security interest by initiating a non-judicial foreclosure under Colorado law, without attempting to obtain money from the debtor, does not constitute debt collection under the FDCPA. Its judgment should be affirmed.

A. 1. The FDCPA defines a "debt" as a consumer's obligation to pay money. And the ordinary meaning of the word "collect" (not itself defined in the FDCPA) is to demand and obtain payment. Debt collection, then, is the process of demanding or obtaining payment from the debtor. A non-judicial foreclosure is plainly not that: a party initiating a non-judicial foreclosure seeks not to collect money from the debtor, but rather to cut off the debtor's ability to make payments, enabling the creditor to realize its security interest as an alternative remedy.

The FDCPA's definition of "debt collector" strongly confirms that conclusion. That definition distinguishes between entities that engage in the collection of debts, which are "debt collectors" subject to the entire FDCPA, and entities that engage in the enforcement of security interests, which are "debt collectors" only for purposes of a specific prohibition not at issue here. The distinction Congress drew between those entities makes sense only if enforcing security interests does not itself constitute debt collection. Treating the enforcement of a security interest as debt collection would read out of the statute the limited-purpose definition related to the enforcement of security interests, thus violating a fundamental tenet of statutory interpretation.

Congress's distinction between the collection of a debt and the enforcement of a security interest tracks a well-established dichotomy at common law. Courts have long recognized that *in rem* actions seeking to enforce liens are distinct from *in personam* actions seeking to recover debts. There is no reason to believe that Congress intended for the FDCPA to erode that distinction.

2. Consistent with the foregoing interpretation, the Federal Trade Commission (FTC) has interpreted the FDCPA not to reach the enforcement of a security interest, including non-judicial foreclosure. The FTC has explained that entities that enforce security interests are not generally subject to the FDCPA, and it has issued an opinion letter explaining that sending notices in connection with effecting a non-judicial foreclosure does not constitute debt collection.

B. The FDCPA's legislative history confirms the plain-text interpretation. In the run-up to the enactment of the FDCPA, Congress considered competing bills. One included in the general definition of "debt collector" not only entities that engage in debt collection but also those that enforce security interests. Another excluded from the definition entities that enforce security interests. Congress struck a compromise by including entities that enforce security interests only in the limited-purpose definition. Treating the enforcement of a security interest as debt collection would undo that compromise, judicially enacting language that Congress itself chose to reject.

C. Petitioner makes several arguments in support of his sweeping contention that initiating a foreclosure constitutes debt collection. None is persuasive.

1. Petitioner argues that, as a practical matter, initiating a foreclosure has the intent and effect of inducing payment. That ignores the history and purpose of the foreclosure remedy, which operates to end a debtor's

right to cure the default and thereby allows the creditor to obtain compensation by enforcing its security interest *rather than* by obtaining payment on the debt. A creditor may prefer such an alternative remedy where, as here, the debtor has shown an unwillingness to make payments for an extended period. It is especially clear here that respondent sought to initiate foreclosure rather than to obtain payment, because respondent never asked petitioner to pay—an inexplicable omission for an entity looking to obtain payment from the debtor in lieu of foreclosure.

2. Petitioner also contends that initiating a non-judicial foreclosure constitutes "indirect" debt collection. But initiating a non-judicial foreclosure differs from actions antecedent to seeking payment from a debtor, such as obtaining the debtor's contact information. An entity that initiates a non-judicial foreclosure does not thereby seek payment from the debtor, whether directly or indirectly.

In arguing to the contrary, petitioner relies on a portion of a dictionary definition this Court previously cited, which defines debt collection as obtaining payment or liquidation of the debt, either by personal solicitation or legal proceedings. But petitioner quotes only a snippet of that definition, and he takes it out of context; in fact, the Court used the definition to support its interpretation of debt collection as obtaining payment of money from the debtor. A non-judicial foreclosure does not satisfy that definition. Petitioner suggests that foreclosure liquidates a debt, but he improperly conflates liquidating an *asset* (*i.e.*, the secured property) with liquidating the *debt* itself. And he omits entirely the requirement that the payment or liquidation occur either by personal solicitation or legal proceedings—something that plainly does not happen in a non-judicial foreclosure.

3. In an effort to avoid the serious superfluity problem his interpretation creates, petitioner suggests that

the limited-purpose definition of "debt collector," which applies to "enforcement of security interests," covers only repossession activity. That argument is entirely atextual; by its terms, the limited-purpose definition reaches *all* enforcement of security interests. In any event, that argument cannot help petitioner; on his view of debt collection, repossession activity would also qualify, leaving the limited-purpose definition superfluous.

D. For the reasons just stated, petitioner's interpretation is precluded by the plain text of the FDCPA. But even if the FDCPA were ambiguous, petitioner's interpretation should be rejected, because construing the FDCPA to reach foreclosure activities would interfere with a core area of state regulation. This Court has recognized that regulating non-judicial foreclosure implicates States' essential sovereign interest in protecting titles to property. Accordingly, the Court has refused to interpret federal law to interfere with state foreclosure law absent clear and manifest congressional intent.

The same principle applies here. The FDCPA's provisions are tailored to practices that demand payment of money by debtors, not to foreclosure activities. Applying the FDCPA would seriously interfere with complex state foreclosure regimes. And it would undermine, rather than bolster, protections afforded to debtors under those regimes. In fact, applying the FDCPA would create an outright conflict with (and thus preempt) numerous state-law provisions, which in many instances are critical to their respective States' foreclosure regimes. The Court should not disrupt the balance of federal and state authority in an area of traditional state concern where Congress has not made clear its intent to do so.

In short, all of the relevant indicia of statutory interpretation point in the same direction in this case. The judgment of the court of appeals should be affirmed.

ARGUMENT

ENFORCING A SECURITY INTEREST BY INITIATING A NON-JUDICIAL FORECLOSURE DOES NOT CONSTITUTE DEBT COLLECTION UNDER THE FAIR DEBT COLLECTION PRACTICES ACT

A. Under The Plain Text Of The FDCPA, Enforcing A Security Interest Is Not Debt Collection

Petitioner has alleged that respondent was a "debt collector" under the FDCPA, obligated to "cease collection of the debt" after receiving petitioner's request for verification until it provided the verification. 15 U.S.C. 1692g(b). To prevail on that claim, petitioner must establish that respondent was a *debt collector* at the time of petitioner's request for verification, which was shortly after respondent sent petitioner a notice that it was initiating a non-judicial foreclosure. In addition, petitioner must establish that respondent engaged in *debt collection* after receiving petitioner's verification request (namely, by filing a notice of election and demand for sale with the public trustee). See 15 U.S.C. 1692g(a), (b); J.A. 23, 37-41. The question in this case is thus whether initiating a non-judicial foreclosure, without more, constitutes collection of a debt and renders an entity a "debt collector." As the plain text of the FDCPA makes clear, the answer to that question is no.

1. The FDCPA defines "debt" as an "obligation or alleged obligation of a consumer to pay money." 15 U.S.C. 1692a(5). "Collect," in turn, is not defined in the statute, but its natural meaning is to "demand and obtain payment." See, *e.g.*, *Webster's Second New International Dictionary* 525 (1959) ("[t]o demand and obtain payment of, as an account, or other indebtedness"); *American Heritage Dictionary* 261 (1976) ("[t]o call for and obtain payment of"); *Random House Dictionary* 289 (1971) ("to receive or compel payment of"); see also *Webster's Second*

New International Dictionary 525 (defining "collection" as "the [a]ct or process of collecting"). Putting those definitions together, collecting a debt means demanding or obtaining a payment of money from the debtor.

Under that understanding, engaging in a non-judicial foreclosure does not constitute debt collection. A party initiating a non-judicial foreclosure does not seek any payment from the debtor. Instead, it seeks to *end* a debtor's ability to make payments, allowing the creditor to make full use of the secured property. See p. 4, *supra*. In a non-judicial foreclosure, one third party (a trustee) sells property to another third party (the purchaser), or even to the creditor itself. Any funds generated at that sale provide the creditor with an *alternative* to seeking payment from the debtor. At no point during the foreclosure process is the debtor required to pay money. Indeed, the foreclosure regime at issue here provides no mechanism for a creditor to obtain payment, because Colorado (like other States) does not allow a creditor to collect a deficiency through the non-judicial foreclosure process. See p. 7, *supra*; 4 *Powell on Real Property* § 37.42[6].

2. Reinforcing and confirming that understanding, the FDCPA itself distinguishes the enforcement of security interests from the collection of debts.

a. Section 1692a(6) defines a "debt collector" as an entity that "regularly collects or attempts to collect, directly or indirectly," debts owed to another or an entity whose "principal purpose * * * is the collection of any debts." 15 U.S.C. 1692a(6). Critically, Section 1692a(6) then provides that, "*[f]or the purpose of* section 1692f(6)"—a provision not at issue here—the phrase "debt collector" "*also* includes" entities whose principal purpose is the "enforcement of security interests." *Ibid.* (emphases added). In setting forth those definitions, the FDCPA thus distinguishes between "the collection of any

debts" and "the enforcement of security interests": a business whose primary purpose is the former is a debt collector for purposes of the entire FDCPA, whereas a business whose primary purpose is the latter qualifies as a debt collector only for the limited purpose of Section 1692f(6). See *ibid.*

The limited-purpose definition makes clear that the enforcement of a security interest does not itself constitute debt collection. A definition that "also includes" a particular meaning "for the purpose" of a specified subsection conveys that the particular meaning does not apply for other purposes. Indeed, Congress routinely uses the same formulation to convey that very point. See, *e.g.*, 37 U.S.C. 305a(e)(1)(B), (e)(3) (stating that, "[f]or the purpose of" a specific determination, "the term 'sea duty' also includes" certain service carried out on a ship in its home port, while the general definition applies only when the ship is away from its port); 38 U.S.C. 101(2), 3701(b)(6) (providing that "[t]he term 'veteran' also includes," "for [specific] purposes," a "surviving spouse," even though qualifying as a "veteran" normally requires active service); 38 U.S.C. 3701(b)(3) (similar).

That understanding also accords with ordinary usage. Consider, for example, the following statement: "The phrase 'voting members of Congress' means all United States Senators; for purposes of breaking a tie in the Senate, the phrase also includes the Vice President of the United States." Such a statement clearly communicates that the Vice President is not a voting member of Congress for other purposes.[3]

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[3] The second sentence of Section 1692a(6) offers further support. It states that, under the FDCPA, "the term ['debt collector'] includes" creditors using a third party's name, "[n]otwithstanding" a later exclusion. Congress omitted the word "also" and the phrase

Accordingly, enforcing a security interest does not generally constitute debt collection, and it renders an entity a "debt collector" only for a limited purpose. That is dispositive here: there can be no doubt that initiating a foreclosure is a paradigmatic way to enforce a security interest. See, *e.g.*, Uniform Commercial Code § 9-501(1) (1972) (allowing a creditor to "foreclose or *otherwise enforce* the security interest by any available judicial procedure" (emphasis added)). Petitioner does not dispute that all of respondent's challenged actions were part of the process of enforcing its client's security interest. See Pet. Br. 2, 12-13.

If enforcing a security interest were sufficient to constitute debt collection, a business that primarily enforces security interests would be a debt collector under the general-purpose definition and thus subject to the entire FDCPA (including Section 1692f(6)). That would read the limited-purpose definition out of the statute, in contravention of the familiar principle of statutory interpretation that a statute should be construed to avoid superfluity. See, *e.g.*, *United States* v. *Jicarilla Apache Nation*, 564 U.S. 162, 185 (2011); see generally Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 174-176 (2012) (Scalia & Garner).

The Court has applied that principle to reject interpretations that, as here, would render a definition meaningless. For example, in *Roberts* v. *Sea-Land Services*, 566 U.S. 93 (2012), the Court rejected an interpretation of the word "award" which would render "unnecessary" a

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"[f]or the purpose of" from that sentence. As a result, that sentence clarifies the general definition of "debt collector," rather than expanding it for a limited purpose. See *Barnhart* v. *Sigmon Coal Co.*, 534 U.S. 438, 452 (2002); cf. *Mount Lemmon Fire District* v. *Guido*, No. 17-587, slip op. 4-5 (Nov. 6, 2018).

"specific definition" that applied "[f]or the purpose" of another subsection. *Id.* at 110 (citation omitted). Because such an interpretation would "offend[] the canon against superfluity," the Court reasoned, the presence of the limited-purpose definition "debunk[ed]" that interpretation. *Id.* at 111. Similarly, where Congress listed "separate[ly]" in a statutory provision a "crime of violence" and the crime of driving while intoxicated, the Court rejected an interpretation of the former which would encompass the latter. *Leocal* v. *Ashcroft*, 543 U.S. 1, 12 (2004). Such an interpretation, the Court explained, would leave the separate listing of the two crimes "practically devoid of significance." *Id.* at 11-12.

The reasoning of those cases applies with particular force here, because the general and limited-purpose definitions of "debt collector" are in close proximity to each other. No inferential step is required to connect the two definitions, nor is there any possibility that Congress simply overlooked one provision in crafting the other: in fact, in setting out the limited-purpose definition of "debt collector," Congress expressly referred back to the general definition, using the phrase "such term." See 15 U.S.C. 1692a(6); cf. *Roberts*, 566 U.S. at 110-111; *Jicarilla Apache Nation*, 564 U.S. at 185-186.

In short, interpreting debt collection to encompass the enforcement of a security interest would impermissibly vitiate "Congress's specification of narrowly defined * * * obligations" for entities that engage in the enforcement of security interests. *Jicarilla Apache Nation*, 564 U.S. at 186. Recognizing that enforcing a security interest does not constitute debt collection, by contrast, "give[s] * * * effect to every clause and word of [the] statute." *Roberts*, 566 U.S. at 111 (citation omitted); see *Bailey* v. *United States*, 516 U.S. 137, 146 (1995).

b. In distinguishing between the enforcement of security interests and the collection of debts, Congress incorporated a distinction deeply ingrained at common law. "It is a settled principle of interpretation that, absent other indication, Congress intends to incorporate the well-settled meaning of the common-law terms it uses." *Sekhar* v. *United States*, 570 U.S. 729, 732 (2013) (internal quotation marks and citation omitted).

At common law, courts recognized that a judicial foreclosure is an action to "enforce the lien" that secures the debt, not an action for "recovery of the sum secured." *Ozmun* v. *Reynolds*, 11 Minn. 459, 472 (1866). As a result, enforcing a lien was permitted even where "action for the recovery of the debt [wa]s barred." *Ibid.*; see *Thayer* v. *Mann*, 36 Pick. (Mass.) 535, 537 (1837); see generally Walter Wheeler Cook, *The Powers of Courts of Equity, Part II*, 15 Colum. L. Rev. 106, 133-134 (1915) (Cook). Similarly, actions to recover debts were "personal" (*in personam*) actions at common law, as distinct from "real" (*in rem* or *quasi in rem*) actions concerning the title of real property, or "mixed" actions concerning both title and a demand for payment. 3 William Blackstone, *Commentaries on the Laws of England* 117-118 (1768); see, *e.g.*, *Freeman* v. *Alderson*, 119 U.S. 185, 187-188 (1886); *Sumers* v. *Board of Commissioners of Garfield County*, 184 P.2d 144, 147 (Colo. 1947) (per curiam); see generally Cook 136 n.73.[4]

3. Other textual cues further support the conclusion that enforcement of security interests is distinct from

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[4] Chapter 7 of the Bankruptcy Code reflects the same distinction: the discharge of debts "extinguishes" only a "debtor's *in personam* liability," while "leaving intact" the creditor's *in rem* "right to foreclose on [a] mortgage." *Johnson* v. *Home State Bank*, 501 U.S. 78, 82-84 (1991); see *Dewsnup* v. *Timm*, 502 U.S. 410, 418 (1992).

debt collection. *First*, the FDCPA repeatedly refers to the "collection" of debts, but refers only to the "enforcement" of security interests. See, *e.g.*, 15 U.S.C. 1692a(6). The use of different verbs underscores that Congress understood the collection of debts and the enforcement of security interests to be distinct concepts. Compare *Webster's Second New International Dictionary* 525 (defining "collect" as "[t]o demand and obtain payment") with *Black's Law Dictionary* 645 (10th ed. 2014) (defining "enforce" as "[t]o give force or effect to").[5]

Second, the FDCPA's substantive provisions support the foregoing understanding of debt collection. Most of the examples of "unfair" debt-collection practices identified in the FDCPA involve ways of obtaining or demanding payment of money. See 15 U.S.C. 1692f(1)-(4) (prohibiting unauthorized "collection of any amount" and addressing payment by postdated check). The others limit methods of communicating with the debtor—a significant step in soliciting the payment of money. See 15 U.S.C. 1692f(5), (7)-(8). Indeed, the sole listed practice that does not primarily relate to obtaining payment of money is Section 1692f(6), which limits certain non-judicial actions to effect dispossession of property. Tellingly, that is the one prohibition to which the limited-purpose definition applies. See 15 U.S.C. 1692a(6).

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[5] Drawing a similar distinction, the Federal Debt Collection Procedures Act, which regulates the federal government's efforts to collect debts, makes clear that it does not "curtail or limit the right[s]" of the government "to enforce a security agreement." 28 U.S.C. 3003(b). And the Single Family Mortgage Foreclosure Act and the Multifamily Mortgage Foreclosure Act both permit the government to carry out non-judicial foreclosures on mortgages it holds as creditor, while making clear that such foreclosures are distinct from "right[s] to obtain a monetary judgment." 12 U.S.C. 3705, 3755(b)(1); see 12 U.S.C. 3768(a)(1) (providing for a referral to the Attorney General for a separate action against a debtor to recover a deficiency).

4. The foregoing interpretation is consistent with positions taken previously by government components. The Federal Trade Commission (FTC) has interpreted the FDCPA's general definition of "debt collector" to exclude the enforcement of security interests. In 1988, the FTC issued formal staff commentary to "clarify and codify" its interpretation of the FDCPA. 53 Fed. Reg. 50,097 (Dec. 13, 1988). In addressing "[s]ecurity enforcers," the FTC set forth the interpretation of the statute's limited-purpose definition of "debt collector" that is discussed above. The agency explained that, "[b]ecause the FDCPA's definition of 'debt collection' includes parties whose principal business is enforcing security interests only for [S]ection [1692f(6)] purposes, such parties (if they do not otherwise fall within the definition) are subject only to this provision and not the rest of the FDCPA." *Id.* at 50,108.[6]

The FTC later specifically addressed the question presented here in response to an inquiry from an attorney engaged in initiating non-judicial foreclosures. The FTC assured the attorney that, even assuming he was a debt collector by virtue of his other activities, sending non-judicial foreclosure notices was outside the scope of the FDCPA. See Federal Trade Commission, Staff Opinion Letter, 1992 WL 12622329, at *2-*4 (Oct. 8, 1992) (Staff Opinion Letter).

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[6] The Bureau of Consumer Financial Protection has also embraced that framework. In 2012, it issued a regulation defining "larger participants" in the "consumer debt collection market" to delineate the scope of the Bureau's supervisory authority under the Dodd-Frank Act. See 77 Fed. Reg. 65,775, 65,776 (Oct. 31, 2012). The definitions in that regulation specify that the phrase "debt collector" does not include "[a]ny person engaged solely in enforcing a security interest." 12 C.F.R. 1090.105(a); see 77 Fed. Reg. 65,781.

In its opinion letter, the FTC advised that the FDCPA—specifically, Section 1692g, the very substantive provision at issue in this case—"does not apply" to "a notice sent by an attorney [debt] collector in connection with a non-judicial foreclosure" that "is required by [state] statute as a condition precedent to the enforcement of a contractual obligation between a creditor and a debtor, whether by judicial or non-judicial process." 1992 WL 12622329, at *3. The FTC further advised that the attorney's actions in the course of non-judicial foreclosure would constitute debt collection if the attorney sent a letter "making demand[s] for payment and asserting that certain actions will be taken absent payment," but even then, only if those demands "[we]re not required by [the] state statute." *Ibid.* While not binding on the FTC, that analysis reflected the FTC staff's "enforcement position." *Id.* at *4.

The FTC's interpretation further demonstrates that the enforcement of security interests and the collection of debts are distinct concepts and that initiating a non-judicial foreclosure, without more, does not constitute debt collection under the FDCPA.

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In light of the foregoing interpretation, respondent was not a debt collector simply because it notified petitioner that it would initiate a non-judicial foreclosure. See 15 U.S.C. 1692a(6); J.A. 37-38. And regardless whether respondent was a debt collector, it did not engage in debt collection after receiving a verification request by virtue of filing a notice of election and demand with the public trustee to initiate the non-judicial foreclosure process. See 15 U.S.C. 1692g(b); J.A. 39-41. Petitioner's claim fails for both of those (closely related) reasons.

B. The FDCPA's Legislative History Confirms That Enforcing A Security Interest By Initiating A Non-Judicial Foreclosure Is Not Debt Collection

The FDCPA's legislative history supports the plain-text interpretation of the statute, showing that Congress treated the enforcement of security interests as distinct from the collection of debts. Indeed, Congress considered, and rejected, language that would have made enforcers of security interests "debt collectors" for all purposes under the FDCPA.

The limited-purpose definition in Section 1692a(6) was drafted by the Senate Banking Committee, which considered competing draft bills. One bill brought entities whose principal purpose was enforcing security interests within the full scope of the FDCPA, defining the phrase "debt collector" as "any person who engages in any business the principal purpose of which is the collection of any debt *or enforcement of security interests*." S. 918, 95th Cong. § 803(f) (1977) (emphasis added). Another bill, by contrast, wholly excluded from the definition of "debt collector" any person "who enforces or attempts to enforce a security interest in real or personal property which is valid under State law." S. 1130, 95th Cong. § 802(8)(E) (1977).[7]

Congress ultimately passed a "composite bill," striking a compromise between those approaches. In that bill,

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[7] Unsurprisingly, interested parties understood the competing definitions as addressing the treatment of foreclosure activities. See *Hearings Before the Subcomm. on Consumer Affairs of the Comm. on Banking, Housing, and Urban Affairs, on S. 656, S. 918, S. 1130, and H.R. 5294: Bills to Amend the Consumer Credit Protection Act to Prohibit Abusive Practices by Debt Collectors*, 95th Cong. 247 (1977) (statement of Lewis H. Goldfarb, FTC Acting Assistant Director for Special Statutes) (describing the exemption for entities enforcing a security interest as an exemption for "parties engaged in repossession *or foreclosure*") (emphasis added)).

Congress included enforcers of security interests as debt collectors only for the limited purpose of Section 1692f(6). See S. Rep. No. 382, 95th Cong., 1st Sess. 1 (1977); *Markup on Debt Collection Legislation Before the S. Comm. on Banking, Housing and Urban Affairs*, 95th Cong. 3-4 (June 30, 1977) (statement of Sen. Riegle) (introducing the new draft of the FDCPA as "consensus legislation" that is "the best blend of opinion that we have been able to formulate from talking and working with all the interested parties").

Petitioner's interpretation would effectively reinstate the rejected language of the earlier Senate bill by treating the enforcement of security interests as debt collection for all purposes. As this Court has stated, however, "[f]ew principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language." *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 442-443 (1987) (citation omitted); see *Chickasaw Nation* v. *United States*, 534 U.S. 84, 93 (2001). That principle is "particularly appropriate" here because the FDCPA "is the result of a series of carefully crafted compromises." *Community for Creative Non-Violence* v. *Reid*, 490 U.S. 730, 748 n.14 (1989).

Another portion of the legislative history further illustrates that Congress did not intend to regulate foreclosure. Both the House and Senate Reports asserted that the FDCPA was needed in part because "there are 13 States, with 40 million citizens, that have no debt collection laws." S. Rep. No. 382, *supra*, at 2; see H.R. Rep. No. 131, 95th Cong., 1st Sess. 3 (1977). But then, as now, *every* State had laws governing foreclosures. See George E. Osborne, *Handbook on the Law of Mortgages* 662-663 (2d ed. 1970); William C. Prather, *Foreclosure of the Security Interest*, 1957 U. Ill. L.F. 420, 450-451 (1957). Congress's

statement that thirteen States did not regulate debt-collection practices suggests both that Congress did not view foreclosure as debt collection and that Congress was motivated by specific deficiencies in state debt-collection laws that had nothing to do with foreclosure.

In sum, Congress considered, and rejected, a definition of "debt collector" that would include entities enforcing security interests within the FDCPA for all purposes. This Court should reject an interpretation of the FDCPA that would resurrect discarded statutory language and thereby undo the compromise Congress struck.

C. Petitioner's Alternative Interpretation Is Contrary To The Plain Text Of The FDCPA

Petitioner makes several arguments in support of his contention that engaging in foreclosure activity constitutes debt collection. See Br. 14-28. None is correct.

1. Petitioner first argues (Br. 14-19) that enforcing a security interest by initiating a non-judicial foreclosure constitutes a "direct" attempt to collect a debt because it seeks money from the debtor.

a. Invoking the "reality" of foreclosure (Br. 16), petitioner suggests that initiating a foreclosure has the intent and effect of inducing payment. But petitioner ignores the fact that enforcement of a security interest is a separate remedy available to a creditor as an *alternative* to collecting payment from the debtor. See pp. 4-5, 17, *supra*. The foreclosure remedy allows a creditor to cut off the debtor's ability to reclaim title in the secured property by making payments. See p. 4, 17, *supra*. And while a debtor might choose to make payments to avoid foreclosure, that is only because state law gives a debtor the right to make payments (and to receive notice of that right) for the debtor's own protection. See, *e.g.*, *Kirchner* v. *Sanchez*, 661 P.2d 1161, 1163 (Colo. 1983).

In many cases, obtaining a lump sum from a foreclosure sale in lieu of continuing to seek payment from the debtor will be a creditor's best option after assessing various factors, including the debtor's financial circumstances; the debtor's history with the creditor; the creditor's liquidity; the relevant housing market; and the financing arrangement. See Lydia Nussbaum, *ADR's Place in Foreclosure: Remedying the Flaws of a Securitized Housing Market*, 34 Cardozo L. Rev. 1889, 1893, 1896 (2013). That was plainly the case here: by the time respondent was retained, multiple efforts to modify petitioner's loan had not succeeded, and petitioner had not made a single payment on his mortgage for more than two years. See Pet. App. 15a-16a.

Indeed, the best evidence that respondent was not seeking payment from petitioner is that it never asked him to pay. When it is desirable to seek payment from the debtor in lieu of foreclosure, a creditor (or its agent) can easily make an express demand, and creditors routinely do so. See, *e.g.*, *Birster* v. *American Home Mortgage Servicing, Inc.*, 481 Fed. Appx. 579, 580-581 (11th Cir. 2012) (per curiam); *Reese* v. *Ellis, Painter, Ratterree & Adams, LLP*, 678 F.3d 1211, 1214 (11th Cir. 2012); *Wilson* v. *Draper & Goldberg, P.L.L.C.*, 443 F.3d 373, 376-377 (4th Cir. 2006). That respondent did not do so here confirms that it was not engaging in debt collection.

Petitioner also errs in suggesting (Br. 15-16) that the foreclosure process usually results in payment by debtors. Only a small fraction of debtors cure their defaults when faced with non-judicial foreclosure. See Colorado County Treasurers & Public Trustees, *Colorado Foreclosure Statistics* <tinyurl.com/COForeclosureStats> (last visited Nov. 7, 2018) (indicating annual cure rates ranging from 2% to 11% of new foreclosures). And while some debtors do make payments after the foreclosure process begins,

there is no evidence that any do so in response to a notice of foreclosure unaccompanied by a demand for payment. Nor does the fact that many foreclosures are withdrawn necessarily suggest widespread payment. Foreclosures can be withdrawn under Colorado law because the debtor files for bankruptcy; default cannot be established in the Rule 120 hearing; the sale is not held in a timely manner; or the process does not accord with one of many other requirements. See Colo. Rev. Stat. §§ 38-38-108, 38-38-109(2)(b)(II)(B), 38-38-109(3)(b); Colo. R. Civ. P. 120.

b. Petitioner argues that initiating a foreclosure creates an "incentive to pay up." Br. 15. But that proves too much: the existence of a security interest will always give a debtor incentive to cure a default to avoid forfeiture of the collateral. If that pressure to pay were enough to constitute debt collection, every effort to enforce a security interest would qualify as debt collection, rendering superfluous the limited-purpose definition in Section 1692a(6) for entities that enforce security interests. See pp. 19-20, *supra*.

Petitioner's view of debt collection is staggering in its apparent breadth. Under his rule, all manner of ordinary interactions would constitute debt collection; all one need do is provide information related to a debt that gives a debtor an incentive to pay. To take one example, suppose that a credit-card company contracts with a credit-reporting service to send customers their credit scores periodically as a perk. If a customer defaults on his payments and receives a credit report reflecting a decrease in his credit score, the customer may view that as a reason to cure the default by tendering payment. On petitioner's view, a credit-reporting service that regularly sends such reports would be a debt collector subject to the FDCPA (and, almost inevitably, would have run afoul of the

FDCPA's substantive requirements, see, *e.g.*, 15 U.S.C. 1692e(11)).

c. Beyond the "incentive to pay up" inherent in the existence of a security interest, petitioner identifies nothing about the relevant notices here that suggested respondent was seeking payment. Accordingly, both courts below concluded that respondent did not seek payment from petitioner. See Pet. App. 12a, 20a-21a. And petitioner himself acknowledges that the question before the Court is "whether non-judicial foreclosure *without* additional conduct qualifies as debt collection." Br. 11 n.5.

Despite that concession, petitioner now suggests that respondent did seek payment from him. See Br. 15. In making that argument, petitioner relies on four documents. Two of them—a notice providing information about foreclosure resources (as required by state law) and a payoff quote provided in response to petitioner's request—are not properly before the Court, both because they were not referenced in or attached to the complaint and because they were not relied upon or addressed below. See *ibid.* (citing J.A. 42-43, 44-45).[8]

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[8] Nor do those documents help petitioner in any event. The notice providing information about the Colorado "foreclosure hotline" and the phone number of the creditor's "loss mitigation representative" is a prerequisite to foreclosure under Colorado law, and it serves to provide the debtor with information about resources rather than to demand payment. Colo. Rev. Stat. § 38-38-102.5(2)(a)-(b); see J.A. 42-43. And the payoff quote cannot be construed as a request for payment because respondent sent it at "[petitioner's] request." J.A. 45; see J.A. 46-47; *Grden* v. *Leikin Ingber & Winters PC*, 643 F.3d 169, 173 (6th Cir. 2011). Even if the notices amounted to debt collection, petitioner could not prevail because the notices were sent or filed after petitioner's verification request and respondent was obligated to provide verification only if it was a debt collector *at the time of* the request. See 15 U.S.C. 1692g(b); p. 16, *supra*.

Petitioner takes out of context statements in the remaining two documents. See Br. 15 (citing J.A. 37-38, 39-41). The first is respondent's initial notice informing petitioner that respondent was "instructed to commence foreclosure against the above-referenced property." J.A. 37. Beyond that single sentence, the notice contained information and disclaimers in an effort to comply with any potentially applicable state and federal law, including information about the amount of the debt. J.A. 37-38. Providing information about a debtor's rights, however, plainly does not amount to a request that the debtor exercise those rights. As the court of appeals concluded, it is "clear" that "[respondent] did not demand payment nor use foreclosure as a threat to elicit payment," whether in that notice or otherwise. Pet. App. 12a; see *id.* at 9a. The second document is the notice of election and demand for sale, which explained that the creditor declared a default and was initiating a foreclosure based on the "failure to make timely payments." J.A. 39. But that notice—which was directed not to petitioner, but to the public trustee—simply described the basis for the default rather than seeking payment. J.A. 23, 39.

d. Finally on this point, petitioner suggests (Br. 18-19) that the rule adopted below is difficult to administer. Not so. The court of appeals held only that initiating a foreclosure, without more, does not constitute debt collection. Under that holding, courts will continue to use the analysis they already perform to determine whether an entity engaged in debt collection, objectively evaluating whether the entity sought to induce payment from the debtor. See, *e.g.*, *Schlaf* v. *Safeguard Property, LLC*, 899 F.3d 459, 467-468 (7th Cir. 2018); *Grden* v. *Leikin Ingber & Winters PC*, 643 F.3d 169, 173 (6th Cir. 2011). It is petitioner's proposed rule that is murky: petitioner would seemingly sweep into the FDCPA entities that take steps

related to enforcing security interests and entities that give debtors an incentive to pay debts. See pp. 27-30, *supra*.

2. Petitioner also contends (Br. 19-20) that initiating a non-judicial foreclosure constitutes "indirect" debt collection. That contention lacks merit.

a. The FDCPA includes in the definition of "debt collector" entities that regularly collect debts "directly or indirectly." 15 U.S.C. 1692a(6). As courts of appeals have recognized, "indirect" debt collection is activity that meaningfully *assists with* the collection of a debt. See, *e.g.*, *Schlaf*, 899 F.3d at 468. "Indirect" debt collection thus consists of conduct that facilitates obtaining payment from the debtor: for example, by collecting debtors' contact information to "stimulate recoveries," see *Romine* v. *Diversified Collection Services, Inc.*, 155 F.3d 1142, 1145, 1147 (9th Cir. 1998), or gathering information used to obtain payment, see *Siwulec* v. *J.M. Adjustment Services, LLC*, 465 Fed. Appx. 200, 204 (3d Cir. 2012). Here, by contrast, respondent did not seek payment from the debtor at all: the foreclosure notice was a step toward enforcing the creditor's security interest, not a step toward obtaining money from the debtor. See p. 28, *supra*.

b. In arguing that the notice at issue here constituted indirect debt collection, petitioner relies on a parenthetical in *Heintz* v. *Jenkins*, 514 U.S. 291 (1995), for the proposition that "[t]o collect a debt or claim is to obtain payment or liquidation of it, either by personal solicitation or legal proceedings." *Id.* at 294 (quoting *Black's Law Dictionary* 263 (6th ed. 1990)). Petitioner suggests that a foreclosure sale, which liquidates the property serving as security, satisfies that definition. That is incorrect. As an initial matter, the Court quoted the definition in support of its conclusion that a "lawyer who regularly tries to *ob-*

tain payment of consumer debts through legal proceedings" is attempting to "collect" those debts. *Ibid.* (emphasis added). Respondent's conduct in this case does not constitute debt collection precisely because respondent did not try to obtain payment of the debt.

More broadly, in relying on the dictionary definition quoted in *Heintz*, petitioner improperly conflates liquidating an *asset* (the secured property) with liquidating the *debt*. To liquidate an asset can mean "convert[ing] (a nonliquid asset) into cash." *Black's Law Dictionary* 1072 (10th ed. 2014). To liquidate a *debt*, however, means "to extinguish" it. *Ibid.*; see *Woodson* v. *Murdock*, 89 U.S. 351, 369 (1874) (listing "[c]omposition"—*i.e.*, settling—"accord and satisfaction, and full payment in cash" as modes of "the liquidation of [a] debt"). Liquidating a secured property by foreclosure does not extinguish the underlying debt, leaving a debtor liable for any deficiency. See Colo. Rev. Stat. § 38-38-106(6); cf. *Woodson*, 89 U.S. at 370 (citing the "very palpable distinction between [a] lien * * * and the debt, obligation, or duty which the lien was created to secure"). And even if a foreclosure could be considered liquidation of a debt, any liquidation occurs as a result of the sale—not as a result of "personal solicitation or legal proceedings," as the cited definition requires. *Heintz*, 514 U.S. at 294; see *Black's Law Dictionary* 1398 (defining "proceeding" and "legal proceeding").[9]

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[9] While the Colorado non-judicial foreclosure scheme includes a court hearing as one step in the non-judicial foreclosure process, that hearing merely confirms the default and does not conclusively authorize the foreclosure sale or yield any funds from third parties. See Colo. R. Civ. P. 120(d)(4). In any event, neither communication at issue here relates to that hearing or to any other court proceeding.

c. Petitioner also suggests (Br. 19) that engaging in foreclosure activity constitutes indirect debt collection because funds from the sale of the collateral to a third party are applied to reduce the indebtedness. To be sure, the enforcement of a security interest allows a creditor to obtain money or its equivalent from a third party while reducing or eliminating the debt. But as explained above, while the enforcement of a security interest provides the creditor with an alternative remedy that unquestionably reduces the amount of the debt, that remedy is entirely distinct from the remedy of collecting the debt itself. See pp. 4-5, 17, *supra*.

Moreover, collecting a debt requires obtaining money from the debtor, not from a third party. A debt is the "obligation *of a consumer* to pay money." 15 U.S.C. 1692a(5) (emphasis added). Collecting a debt means obtaining payment of *that* obligation. See *Webster's Second New International Dictionary* 525; *Grden*, 643 F.3d at 172; pp. 16-17, *supra*. While the FDCPA prohibits entities from obtaining payment *of the debtor's money* by harassing his employer or his relatives or embarrassing him in public, see, *e.g.*, 15 U.S.C. 1692c(b), 1692d, 1692f(7), petitioner identifies no provision that treats obtaining payment from a third party as debt collection under the statute.

Two examples illustrate why obtaining payment from a third party cannot constitute debt collection. A creditor who writes off the nonpayment of a loan as a loss on its taxes may receive some compensation that offsets the loss. But no one would say that, in obtaining that alternative compensation, the creditor is collecting the debt. Likewise, a pawn shop does not collect a debt when it sells a watch held as collateral for an unpaid loan—even though doing so eliminates the debt. Rather, the pawn shop is exercising its alternative remedy by liquidating the collat-

eral. In short, not everything that compensates the creditor or reduces the debtor's indebtedness constitutes debt collection.

3. Recognizing that the limited-purpose definition of "debt collector" stands in the way of his position, petitioner attempts preemptively to address that provision. See Br. 24-26. That effort is unavailing.

Petitioner argues that the limited-purpose definition provides "additional coverage for those who engage *only* in the enforcement of a security interest without also qualifying under the main definition." Br. 25. As petitioner acknowledges elsewhere, however, the import of his position is that *every* enforcement of a security interest also brings an entity within the general definition. See, *e.g.*, Br. 2, 16 n.7. Under petitioner's interpretation, therefore, the limited-purpose definition is entirely superfluous. That cannot be correct. See pp. 19-20, *supra*.

Petitioner suggests that the limited-purpose definition of "debt collector" has meaning because it "covers classic 'repo' activity." Br. 25. As an initial matter, there is no textual basis for reading the limited-purpose definition to apply only to repossession activity. That definition applies to the "enforcement of security interests," which, by its terms, indisputably includes foreclosure. 15 U.S.C. 1692a(6).

Congress used broad language in defining who is subject to the limited-purpose definition, then used narrower language in setting out the prohibited conduct for those entities. While any entity whose primary purpose is enforcing security interests falls within the limited-purpose definition, the referenced substantive prohibition, Section 1692f(6), governs only a small subset of enforcement activity: certain actions to "effect dispossession or disablement of property."

Petitioner contends (Br. 26) that the narrower language of that substantive prohibition gives reason to read the limited-purpose definition similarly narrowly. But that is exactly the wrong inference. Rather, the contrasting language in the two provisions shows that Congress intended them to have different scope. See, *e.g.*, *Russello* v. *United States*, 464 U.S. 16, 23 (1983). That comports with the FDCPA's general approach: the FDCPA broadly defines "debt collector," then uses narrower language in other provisions to render a subset of a debt collector's activities actionable.[10]

In any event, petitioner's broad definition of debt collection would encompass even classic repossession activity. His definition covers any actions that give the debtor an incentive to pay and any actions to obtain compensation for a debt owed, no matter who makes the payment or whether the action comes in an effort to enforce a security interest. See Br. 15-16, 19-20. Repossession activity, like foreclosure activity, may give the debtor an incentive to pay the debt. See Colo. Rev. Stat. § 4-9-623 (allowing a debtor to cure after repossession until sale). And just as a non-judicial foreclosure notice is a prerequisite to col-

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[10] To the extent petitioner suggests that "enforcement of security interests" in the limited-purpose definition includes *both* foreclosure and repossession activity, and that the inclusion of repossession activity would leave the limited-purpose definition with some function, that argument likewise fails. Foreclosure is a paradigmatic way to enforce a security interest. See p. 19, *supra*. If "collection of any debts" in Section 1692a(6) already included foreclosure, phrasing the limited-purpose definition in terms of enforcing security interests would make no sense. See *Russello*, 464 U.S. at 21; cf. *Leocal*, 543 U.S. at 12 (rejecting an interpretation that would leave a provision practically devoid of significance, despite the fact that some relatively minor applications would remain).

lecting money from third parties at a subsequent sale, repossession is a necessary step to collecting money from the sale of the repossessed asset. See Br. 19-20.

In short, under petitioner's expansive definition of debt collection, there is no entity whose principal purpose is the enforcement of security interests but not the collection of debts. Petitioner's interpretation fails to give the limited-purpose definition in Section 1692a(6) any meaningful work to do.

4. Petitioner further contends that the FDCPA's venue provision, Section 1692i(a), "expressly contemplates that foreclosure constitutes 'debt collection.'" Br. 21. That is incorrect.

The venue provision directs a "debt collector who brings any legal action on a debt against any consumer," including an action to "enforce an interest in real property securing the consumer's obligation," to bring such an action in a particular judicial district. 15 U.S.C. 1692i(a). That language addresses an action by an entity that is *already* a debt collector and then proceeds to enforce a security interest. *Ibid.* Tellingly, Section 1692i(a) describes an action to enforce a real property interest not as debt collection, but as a "legal action *on a debt* against any consumer." *Ibid.* (emphasis added). That description reinforces the conclusion that foreclosure is not debt collection. What is more, Section 1692i(a) plainly addresses a *judicial* foreclosure—*i.e.*, a "legal action"—brought by a debt collector. Accordingly, Section 1692i(a) does not purport to govern anything related to a non-judicial foreclosure, even when carried out by an entity that is otherwise a debt collector.

Petitioner contends that the venue provision "only makes sense" if foreclosures fall within the full scope of the FDCPA. Br. 21. But that ignores the fact that a "debt collector" can engage in activity that is not debt collection.

For example, an entity that regularly sends demand letters asking for payment would be a "debt collector" (absent some applicable exclusion). Section 1692i merely prevents that entity from later filing in a distant venue a judicial foreclosure action—an act, it bears repeating, that Section 1692i does not describe as debt collection.

5. Petitioner argues (Br. 22) that an expansive interpretation of debt collection would advance the FDCPA's purpose of preventing "abusive" and "deceptive" debt-collection practices. But that simply begs the question. Because the enforcement of a security interest is not debt collection, Congress did not intend to regulate it. And little wonder: regulating foreclosure has long been a core function of state law. See pp. 40-41, *infra*. While only some States regulated debt-collection practices when the FDCPA was enacted, every State regulated foreclosure. See p. 26, *supra*.

In any event, as this Court has made clear in rejecting efforts to expand the definition of "debt collector," it is "quite mistaken to assume * * * that whatever might appear to further the statute's primary objective must be the law." *Henson* v. *Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725 (2017) (internal quotation marks, citation, and alteration omitted). Like virtually all other legislation, the FDCPA is a product of "compromise" that does not "pursue[] its stated purpose at all costs." *Ibid.* (citation and alterations omitted). That observation is particularly salient here because the breadth of the FDCPA's regulation of the enforcement of a security interest was itself the result of a specific congressional compromise. See pp. 25-26, *supra*.

6. Citing the legislative history, petitioner observes that Congress referred to the "collection of debts, such as mortgages," and suggested that "mortgage service com-

panies" are covered by the FDCPA in certain circumstances. Br. 24 (citing S. Rep. No. 382, *supra*, at 3-4) (emphasis omitted). But application of the FDCPA to mortgage service companies (to the extent they acquire a debt after default) is entirely unremarkable, because those companies collect payments on a mortgage from the debtor both before and after default. See Federal Trade Commission, *Making Payments to Your Mortgage Servicer* (June 2010) <tinyurl.com/ftcmakingpayments>; Bureau of Consumer Financial Protection, *What's the Difference Between a Mortgage Lender and a Servicer* (Sept. 13, 2017) <tinyurl.com/askcfpb>.

In an amicus brief supporting petitioner, a handful of current members of Congress (none of whom was in Congress when the FDCPA was enacted) rely on statements by Representative Annunzio suggesting that Congress intended to include mortgage foreclosure in the FDCPA. See Members of Congress Br. 11 n.3. Each of those statements appears to refer to attempts to extract payment from the debtor by threatening sale of the property; none evinces an intention to bring foreclosure activity directly within the scope of the statute. In any event, "floor statements by individual legislators rank among the least illuminating forms of legislative history." *NLRB* v. *SW General, Inc.*, 137 S. Ct. 929, 943 (2017). And even within that category, Representative Annunzio's remarks are particularly unilluminating, because they came before the debate over competing versions of the pending legislation, one of which included enforcers of security interests in the general definition of "debt collector." See p. 25, *supra*.[11]

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[11] Petitioner also notes that *Jerman* v. *Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573 (2010), arose in the context of foreclosure. See Br. 14 n.6. *Jerman* presented a question about the bona fide error defense, and the Court had no occasion to consider

D. The FDCPA Should Not Be Construed To Interfere With A Core Area Of State Concern

The text of the FDCPA makes plain that enforcing a security interest by initiating a non-judicial foreclosure is not debt collection. But even if the FDCPA were ambiguous, it should be interpreted to avoid significant interference with state foreclosure law.

1. There is an "essential state interest" in regulating foreclosure that should not be "displace[d]" unless Congress made its intent to do so "clear and manifest." *BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 544 (1994) (citation omitted). Absent clear intent by Congress to override state foreclosure law, "our federal system demands deference to long-established traditions of state regulation." *Id.* at 546; see *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

This Court has specifically refused to interpret ambiguous federal statutes in a way that would disrupt state non-judicial foreclosure schemes. In *BFP*, the Court interpreted ambiguous language in the Bankruptcy Code to avoid disrupting the "diverse" state foreclosure schemes created to "achieve what each [State] considers the proper balance between the needs of lenders and borrowers." 511 U.S. at 541-542. The Court thus held that the actual sale price at a state non-judicial foreclosure sale necessarily constituted "reasonably equivalent value" under the Code, with the result that the sale could not be

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what actions made the defendant a debt collector or whether it was acting in connection with the collection of a debt. See 559 U.S. at 580. The parties' silence on those issues is hardly surprising, because the relevant notice in *Jerman* was included in a complaint that, in addition to seeking judicial foreclosure, made an express demand for a monetary judgment against the debtor. See Compl. at 2, *Countrywide Home Loans, Inc.* v. *Jerman*, Civ. No. 06-459 (Ohio Ct. C.P. Apr. 17, 2006).

deemed a fraudulent transfer. *Id.* at 533, 545. The Court reached that conclusion despite Congress's broad powers to regulate bankruptcy. See *id.* at 543. To hold otherwise, the Court reasoned, would leave a "federally created cloud" over the title of property purchased at a foreclosure sale. *Id.* at 544.

Similarly, in *United States* v. *Brosnan*, 363 U.S. 237 (1960), the Court addressed whether federally created liens could be extinguished by state proceedings in which the federal government did not participate. The Court recognized the need for uniformity in laws relating to collecting federal taxes, but it emphasized that, by "resort[ing] to the use of liens," Congress "came into an area of complex property relationships long since settled and regulated by state law." *Id.* at 241-242. Accordingly, the Court construed federal law narrowly and held that state-law proceedings extinguished the liens. See *ibid.* The Court made clear that it would not adopt an expansive interpretation of federal law without clear "congressional direction" because such an interpretation would cause "severe dislocation" of state property law, including "non-judicial means of enforcing private liens." *Id.* at 242.[12]

Like the statutes at issue in *BFP* and *Brosnan*, the FDCPA does not evince a clear and manifest purpose to intrude upon state foreclosure law. To the contrary, the

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[12] Like the Court, Congress has been reluctant to tread on state foreclosure regimes. For instance, Congress declined to enact federal legislation that would have regulated non-judicial foreclosures by private parties. See Grant S. Nelson & Dale A. Whitman, *Reforming Foreclosure: The Uniform Nonjudicial Foreclosure Act*, 53 Duke L.J. 1399, 1413-1415 (2004). As a result, that area of law "remains largely the province of the states." *Id.* at 1415. To stretch the FDCPA to cover non-judicial foreclosure activity would be to do through the FDCPA what Congress chose not to do itself, thereby short-circuiting the legislative process in a controversial and sensitive area.

FDCPA substantively regulates conduct related to foreclosure only in a single narrow provision, see 15 U.S.C. 1692f(6), which poses no obstacle to the operation of state foreclosure law. Congress's decision to regulate the enforcement of security interests (including foreclosure) only in narrow circumstances in which the conduct necessarily violates state law reflects its desire to defer to the States in this context.

Unlike the federal laws at issue in *BFP* and *Brosnan*, moreover, the FDCPA embraces variation and takes care to preserve state law. The FDCPA expressly provides that state law is "not annul[led], alter[ed], or affect[ed]" except in cases of outright inconsistency, and that no such inconsistency exists if state law provides greater protection to consumers than does the FDCPA. 15 U.S.C. 1692n. The FDCPA's legislative history likewise reflects that Congress took "steps to minimize any * * * infringement" on States' rights. H.R. Rep. No. 131, *supra*, at 2; see S. Rep. No. 382, *supra*, at 6. It is little wonder, then, that this Court has previously recognized the force of "federalism concern[s]" in this context and has declined to construe the FDCPA in a manner that would interfere with a core state interest. See *Sheriff* v. *Gillie*, 136 S. Ct. 1594, 1602 (2016).

2. Petitioner's interpretation of the FDCPA would extensively intrude into the state-created and state-regulated foreclosure process; allow debtors to challenge foreclosures that are entirely proper under state law; and interpose an ill-fitting federal framework on state law in a core area of state concern. Several provisions of the FDCPA would render critical features of some state-law schemes unworkable, if not preempt them outright. That is no small matter: state foreclosure laws require strict compliance, and a technical defect in a foreclosure notice can render the resulting sale void. See 4 *Powell on Real*

Property § 37.42[3]. For that reason, violations of state law resulting from efforts to comply with the FDCPA would cast into doubt the validity of title after a foreclosure sale—an intolerable result. See *BFP*, 511 U.S. at 544 & n.8.

a. Conflicts with state law would be commonplace under petitioner's interpretation. For example, the FDCPA broadly bans communications with third parties by debt collectors "in connection with the collection of any debt." 15 U.S.C. 1692c(b). If engaging in foreclosure activity constituted debt collection, simply advertising a foreclosure sale—an essential requirement of all state foreclosure schemes—would often violate the FDCPA. See *Ho* v. *ReconTrust Co., NA*, 858 F.3d 568, 575 (9th Cir.), cert. denied, 38 S. Ct. 504 (2017); see also, *e.g.*, Ala. Code § 35-10-13; Ariz. Rev. Stat. Ann. § 33-808; Mich. Comp. Laws § 600.3208; Wash. Rev. Code § 61.24.040(5).

Interjecting the FDCPA in this manner would be deeply troubling for state foreclosure regulation and affirmatively harmful for debtors: robust notice of the sale fosters competitive bidding that serves to increase the sale price of a property, thereby eliminating or reducing the amount the debtor may owe in any subsequent proceeding. If the FDCPA preempted those essential notice requirements, it would disrupt the operation of each state-law regime and create uncertainty as to whether a foreclosure sale held without such notices is legitimate, placing title to the property sold under a "federally created cloud." *BFP*, 511 U.S. at 544.

Similarly, state law often requires entities engaging in non-judicial foreclosure to provide certain notices directly to the debtor or to the property address. See 1 Grant S. Nelson et al., *Real Estate Finance Law* § 7:20, at 944-945 (6th ed. 2014); see also, *e.g.*, Ariz. Rev. Stat. Ann. § 33-809(B); Colo. Rev. Stat. § 38-38-102.5(2); N.H. Rev. Stat.

Ann. § 479:25; Wash. Rev. Code § 61.24.040(1)(b)(i); Colo. R. Civ. P. 120(b)(4). But the FDCPA bans direct communication "in connection with the collection of any debt" with a debtor who is represented by counsel. 15 U.S.C. 1692c(a)(2). Under petitioner's interpretation, those state-law provisions would also be preempted by federal law because the FDCPA is more protective of the consumer on the narrow question whether the communication is permitted. See *Ho*, 858 F.3d at 575.

The provision at issue here, Section 1692g(b), which requires a debt collector to "cease collection of the debt" upon receiving a request for verification, could itself interfere with intricate state-law notice regimes. States often have strict time limits for sending foreclosure notices. See, *e.g.*, Ariz. Rev. Stat. Ann. § 33-809(C) (five business days); Cal. Civ. Code § 2924b(b)(1) (ten business days). Requiring entities to cease sending foreclosure notices until they provide verification could make it impossible in some circumstances to meet those deadlines. See *Ho*, 858 F.3d at 575.

b. Beyond such outright conflicts, imposing the FDCPA here would work at cross purposes with other provisions of state law. For instance, the FDCPA requires an initial communication with a consumer to state that the sender "is attempting to collect a debt" and that "any information obtained will be used for that purpose." 15 U.S.C. 1692e(11). Colorado law requires the foreclosing entity to provide the debtor with information about the foreclosure hotline, a state resource for avoiding foreclosure. Colo. Rev. Stat. § 38-38-102.5(2)(a). But the initial disclaimer required by the FDCPA may deter consumers from using that resource, out of concern that any information disclosed would be used against them. That

petitioner's interpretation of the FDCPA would "obstruct[]" rather than "further[]" the FDCPA's aim is all the more reason to reject it. See Scalia & Garner 63.

Similarly, the FDCPA requires a statement in the initial notice that "the debt will be assumed to be valid by the debt collector" if not disputed within 30 days. 15 U.S.C. 1692g(a)(3). But Colorado law provides a substantial mechanism for verifying the underlying debt regardless of the debtor's response within that time period. Before a non-judicial foreclosure sale, the foreclosing entity must submit evidence of the debt and attest to the facts giving rise to the default; the debtor is entitled to a hearing in which it may dispute the existence of a default and the creditor's legal authority to foreclose. See Colo. R. Civ. P. 120(a), (c), (d). And regardless whether the debtor participates, the court must determine that the creditor is entitled to proceed with the sale before allowing the foreclosure process to move forward. See Colo. R. Civ. P. 120(d)(2). Thus, while the FDCPA requires a debt collector to verify the debt only when the debtor so requests, Colorado law *always* requires proof of default—including verification of the debt.

Thrusting the FDCPA into the non-judicial foreclosure process, then, is a recipe for chaos. Far from promoting the FDCPA's aim of stopping harassing and abusive communications, it would remove state-law consumer protections specifically tailored for the foreclosure context and replace them with ill-fitting federal requirements designed (and plainly better suited) for attempts to collect money. And it would significantly interfere with the States' prerogative to regulate foreclosure. This Court should reject such an interpretation.

3. Recognizing some of the potential conflicts created by his interpretation, petitioner offers several responses. See Br. 26-28. None of those responses is persuasive.

a. Petitioner repeatedly points to the "inadequa[cy]" of state laws governing debt-collection practices. Br. 27-28; see Br. 3, 14, 16, 22. But Congress enacted the FDCPA to address inadequate state *debt-collection laws*. As discussed above, both the House and Senate Reports made clear that it was those laws, not state laws governing foreclosure, that Congress deemed lacking. See pp. 26-27, *supra*. Rather than considering state foreclosure laws inadequate, Congress and this Court have given them a great deal of deference. See pp. 40-41 & n.12, *supra*.

b. Petitioner questions whether regulating foreclosure is a traditional state interest that Congress does not lightly displace, observing that other federal statutes regulate in the area. See Br. 26-27. But in assessing whether federal law infringes on the "respect for the States as independent sovereigns in our federal system," it is "the historic presence of state law," not "the absence of federal regulation," that matters. See *Wyeth* v. *Levine*, 555 U.S. 555, 565 n.3 (2009) (internal quotation marks and citation omitted). This Court has already recognized that regulating foreclosure is a core state interest; in *BFP*, it interpreted the Bankruptcy Code—one of the federal statutes on which petitioner relies—to avoid a conflict with state law. See 511 U.S. at 544-545.

c. Petitioner invokes Section 1692o, which allows a State to obtain an exemption from the FDCPA if a federal agency determines that the State not only subjects debt-collection practices to requirements "substantially similar to those imposed by" the FDCPA but also provides for "adequate * * * enforcement." 15 U.S.C. 1692o; see Br. 27. But that mechanism offers no relief for States with extensive and consumer-protective foreclosure regimes. To qualify for the exemption, a state-law scheme must contain provisions that "correspond[]" to each of the FDCPA's substantive provisions, including definitions

that "import the same meaning and have the same application" as those in the FDCPA. 12 C.F.R. 1006.4(a)(1); see 12 C.F.R. 1006.4 (requiring provision-by-provision comparison).[13] No State's foreclosure regime could possibly qualify—further proof that a regime that governs debt collection is distinct from one governing foreclosure. See, *e.g.*, Colo. Rev. Stat. §§ 38-38-100.3 to 38-38-114. Indeed, many of the requirements that make sense for debt collectors are antithetical to the foreclosure process. See pp. 43-45, *supra*.

d. Petitioner has little to say about the state-law conflicts themselves. Aside from the bare assertion that compliance with both state and federal law "is not difficult," petitioner argues that federal law preempts state law in case of conflict; that States should amend their foreclosure laws to accommodate the FDCPA; and that the FDCPA overrides state foreclosure law that "gets in the way." Br. 27-28 & n.15. Those arguments give the back of the hand to States' core interest in regulating foreclosure. See *BFP*, 511 U.S. at 544 & n.8; pp. 40-41, *supra*.[14]

One of petitioner's amici addresses a subset of the state-law conflicts, but its responses (which petitioner does not advance) lack merit. As to state-law provisions that require notices sent directly to the consumer and to

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[13] Tellingly, only a single State has to date obtained an exemption under Section 1692o. See 60 Fed. Reg. 66,972, 66,973 (Dec. 27, 1995).

[14] Petitioner also suggests that the FDCPA already intrudes into state law because it covers judicial foreclosures. See Br. 26. It is far from obvious that the FDCPA reaches all judicial foreclosures, which provide another means of enforcing security interests. In any event, the interference with state law is much greater as to non-judicial foreclosure. The FDCPA contains multiple exceptions for judicial proceedings, and those exceptions do not apply to a state non-judicial foreclosure process such as the one at issue here. See 15 U.S.C. 1692a(6)(D), 1692c(b), 1692e(11), 1692g(d).

certain third parties, the amicus argues that creditors can avoid conflict with the FDCPA by including a consent provision in the deed of trust. See NCLC Br. 23-24. But the FDCPA allows communications based on the consumer's consent only when consent is "given directly to the debt collector." 15 U.S.C. 1692c(a), (b). In virtually every case, a provision in a deed of trust will not satisfy this requirement, because debt collectors are entities that obtain a debt after a default, well after the deed of trust is executed. See 15 U.S.C. 1692a(6)(F)(iii); *Henson*, 137 S. Ct. at 1724. In any event, forcing parties to add contract terms in an effort to accommodate federal law interferes with the States' prerogative to regulate foreclosure. See *Ho*, 858 F.3d at 576.

The same amicus also suggests that the conflict with state law can be avoided because the FDCPA exempts communications made with the "express permission of a court of competent jurisdiction." 15 U.S.C. 1692c(a), (b); see NCLC Br. 23. But the vast majority of state-law foreclosure requirements imperiled by petitioner's interpretation come from state statutes, not court orders (or even court rules). See pp. 43-44, *supra*. If the exemption could be read to cover notices required by state law, then the exemption would apply here and FDCPA liability could not exist, because the notice of election and demand for sale was required under the Colorado non-judicial foreclosure regime, as petitioner does not dispute. See Br. 16.

e. Finally, petitioner and his amici invoke the importance of the home in American life and the dangers of abuse in this context. See, *e.g.*, Br. 3. But that is the very reason that States have longstanding rules governing foreclosures and providing protections for debtors. Petitioners offer no reason to take the cudgel of the FDCPA to state-law foreclosure regimes. Rather than addressing

concerns specific to foreclosure, the FDCPA would undermine the state frameworks designed for that purpose. The benefits of the FDCPA expansion petitioner seeks, in turn, would accrue primarily to the lawyers responsible for the "cottage industry" of litigation that has arisen under the FDCPA. Cf. *Federal Home Loan Mortgage Corp.* v. *Lamar*, 503 F.3d 504, 513 (6th Cir. 2007) (citation omitted). This Court should decline petitioner's invitation to effect such a dramatic change, and it should instead leave federal law to regulate debt-collection practices and state law to regulate foreclosure.

* * * * *

The plain language of the FDCPA disposes of this case. Respondent was neither a debt collector nor engaging in debt collection simply by initiating a non-judicial foreclosure. And if any doubt remains, the Court should reject petitioner's interpretation on the ground that it would "radically readjust[] the balance of state and national authority." *BFP*, 511 U.S. at 544 (citation omitted). The court of appeals correctly held that merely enforcing a security interest by initiating a non-judicial foreclosure under Colorado law does not constitute debt collection under the FDCPA, and its judgment should be affirmed.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

APPENDIX

15 U.S.C. 1692-1692p provides:

§ 1692. Congressional findings and declaration of purpose

(a) Abusive practices

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Inadequacy of laws

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Available non-abusive collection methods

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Interstate commerce

Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) Purposes

It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive

debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

§ 1692a. Definitions

As used in this subchapter—

(1) The term "Bureau" means the Bureau of Consumer Financial Protection.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be

owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide

consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

§ 1692b. Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

§ 1692c. Communication in connection with debt collection

(a) Communication with the consumer generally

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) Communication with third parties

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) Ceasing communication

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) "Consumer" defined

For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

§ 1692d. Harassment or abuse

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(3) of this title.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

§ 1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this subchapter.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

§ 1692f. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include,

but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

§ 1692g. Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector

in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d) Legal pleadings

A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) Notice provisions

The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by Title 26, title V of Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

§ 1692h. Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

§ 1692i. Legal actions by debt collectors

(a) Venue

Any debt collector who brings any legal action on a debt against any consumer shall—

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Authorization of actions

Nothing in this subchapter shall be construed to authorize the bringing of legal actions by debt collectors.

§ 1692j. Furnishing certain deceptive forms

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 1692k of this title for failure to comply with a provision of this subchapter.

§ 1692k. Civil liability

(a) Amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2)

(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) Factors considered by court

In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Jurisdiction

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) Advisory opinions of Bureau

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

§ 1692*l*. Administrative enforcement

(a) Federal Trade Commission

The Federal Trade Commission shall be authorized to enforce compliance with this subchapter, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another Government agency under any of paragraphs (1) through (5) of subsection (b), subject to subtitle B of the Consumer Financial Protection Act of 2010. For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this subchapter, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Applicable provisions of law

Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with any requirements imposed under this subchapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

(2) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(3) subtitle IV of Title 49, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

(4) part A of subtitle VII of Title 49, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this subchapter.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) Agency powers

For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law, except as provided in subsection (d).

(d) Rules and regulations

Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010, the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this subchapter.

§ 1692m. Reports to Congress by the Bureau; views of other Federal agencies

(a) Not later than one year after the effective date of this subchapter and at one-year intervals thereafter, the Bureau shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Bureau deems necessary or appropriate. In addition, each report of the Bureau shall include its assessment of the extent to which compliance with this subchapter is being achieved and a summary of the enforcement actions taken by the Bureau under section 1692*l* of this title.

(b) In the exercise of its functions under this subchapter, the Bureau may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 1692*l* of this title.

§ 1692n. Relation to State laws

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

§ 1692o. Exemption for State regulation

The Bureau shall by regulation exempt from the requirements of this subchapter any class of debt collection practices within any State if the Bureau determines that under the law of that State that class of debt collection

practices is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.

§ 1692p. Exception for certain bad check enforcement programs operated by private entities

(a) In general

(1) Treatment of certain private entities

Subject to paragraph (2), a private entity shall be excluded from the definition of a debt collector, pursuant to the exception provided in section 1692a(6) of this title, with respect to the operation by the entity of a program described in paragraph (2)(A) under a contract described in paragraph (2)(B).

(2) Conditions of applicability

Paragraph (1) shall apply if—

(A) a State or district attorney establishes, within the jurisdiction of such State or district attorney and with respect to alleged bad check violations that do not involve a check described in subsection (b), a pretrial diversion program for alleged bad check offenders who agree to participate voluntarily in such program to avoid criminal prosecution;

(B) a private entity, that is subject to an administrative support services contract with a State or district attorney and operates under the direction, supervision, and control of such State or district attorney, operates the pretrial diversion program described in subparagraph (A); and

(C) in the course of performing duties delegated to it by a State or district attorney under the contract, the private entity referred to in subparagraph (B)—

(i) complies with the penal laws of the State;

(ii) conforms with the terms of the contract and directives of the State or district attorney;

(iii) does not exercise independent prosecutorial discretion;

(iv) contacts any alleged offender referred to in subparagraph (A) for purposes of participating in a program referred to in such paragraph—

(I) only as a result of any determination by the State or district attorney that probable cause of a bad check violation under State penal law exists, and that contact with the alleged offender for purposes of participation in the program is appropriate; and

(II) the alleged offender has failed to pay the bad check after demand for payment, pursuant to State law, is made for payment of the check amount;

(v) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that—

(I) the alleged offender may dispute the validity of any alleged bad check violation;

(II) where the alleged offender knows, or has reasonable cause to believe, that the alleged bad check violation is the result of theft or forgery of the check, identity theft, or other fraud that is not the result of the conduct of the alleged offender, the alleged offender may file a crime report with the appropriate law enforcement agency; and

(III) if the alleged offender notifies the private entity or the district attorney in writing, not later than 30 days after being contacted for the first time pursuant to clause (iv), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the district attorney or an employee of the district attorney authorized to make such a determination makes a determination that there is probable cause to believe that a crime has been committed; and

(vi) charges only fees in connection with services under the contract that have been authorized by the contract with the State or district attorney.

(b) Certain checks excluded

A check is described in this subsection if the check involves, or is subsequently found to involve—

(1) a postdated check presented in connection with a payday loan, or other similar transaction, where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered;

(2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;

(3) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn, or delivered;

(4) a check for partial payment of a debt where the payee had previously accepted partial payment for such debt;

(5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn, or delivered; or

(6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn, or delivered.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) State or district attorney

The term "State or district attorney" means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed prosecuting attorneys in a district, county (as so defined), municipality or comparable jurisdiction, who may be referred to by a variety of titles such as district attorneys, prosecuting attorneys, commonwealth's attorneys, solicitors, county attorneys, and state's attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.

(2) Check

The term "check" has the same meaning as in section 5002(6) of title 12.

(3) Bad check violation

The term "bad check violation" means a violation of the applicable State criminal law relating to the writing of dishonored checks.